

SENATE BILL NO. 247

INTRODUCED BY J. COBB

A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THE MENTAL STATE RELATED TO ONE TYPE OF MEDICAID FRAUD; CLARIFYING THAT A FALSE OR MISLEADING STATEMENT IS NEEDED FOR THAT TYPE OF MEDICAID FRAUD; REMOVING A PROVISION ALLOWING A CONVICTION FOR ATTEMPTING TO OBTAIN A SERVICE OR ITEM THAT THE PERSON IS NOT ENTITLED TO UNDER A REGULATION OR POLICY NOT ADOPTED AS AN ADMINISTRATIVE RULE UNDER THE MONTANA ADMINISTRATIVE PROCEDURE ACT; AND AMENDING SECTION 45-6-313, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 45-6-313, MCA, is amended to read:

"45-6-313. Medicaid fraud. (1) A person commits the offense of medicaid fraud when:

(a) the person obtains a medicaid payment or benefit for the person or another person by purposely or knowingly:

~~——(i) making, submitting, or authorizing the making or submitting of a false or misleading medicaid claim, statement, representation, application, or document to a medicaid agency for a service or item when that the person knows or has reason to know that the person is not entitled to under applicable statutes, regulations, or under applicable rules, or policies to medicaid payment or benefits for the service or item or for the amount of payment requested or claimed; or~~

~~——(ii) making, submitting, or authorizing the making or submitting of a medicaid claim, statement, representation, application, or document under the medicaid program for a service or item when the person knows or has reason to know that the person is not entitled under applicable statutes, regulations, rules, or policies to medicaid payment or benefit for the service or item or for the amount of payment requested or claimed; adopted under Title 2, chapter 4;~~

(b) the person purposely or knowingly:

(i) solicits, accepts, offers, or provides any remuneration, including but not limited to a kickback, bribe, or rebate, other than an amount legally payable under the medical assistance program, for furnishing services or items for which payment may be made under the medicaid program or in return for purchasing,

1 leasing, ordering, arranging for, or recommending the purchasing, leasing, or ordering of any services or
2 items from a provider for which payment may be made under the medicaid program; or

3 (ii) makes, offers, or accepts a remuneration, a rebate of a fee, or a charge for referring a recipient
4 to another provider for the furnishing of services or items for which payment may be made under the
5 medicaid program; or

6 (c) the person, with respect to a managed care contract, health maintenance organization contract,
7 or similar contract or subcontract under the medicaid program, purposely or knowingly fails or refuses to
8 provide covered medically necessary services to eligible recipients as required by the contract.

9 (2) Any conduct or activity that does not violate or that is protected under the provisions of, or
10 federal regulations adopted under, 42 U.S.C. 1395nn or 42 U.S.C. 1320a-7b(b), as may be amended, is
11 not considered an offense under subsection (1)(b), and the conduct or activity must be accorded the same
12 protections allowed under federal laws and regulations.

13 (3) In a prosecution for a violation of this section, it is a defense if the person acted in reliance
14 upon the written authorization or advice of the department.

15 (4) (a) A person convicted of the offense of medicaid fraud involving payments, benefits, or claims
16 not exceeding \$1,000 in value shall be fined an amount not to exceed \$1,000 or be imprisoned in the
17 county jail for a term not to exceed 6 months, or both. A person convicted of a second offense shall be
18 fined \$1,000 and be imprisoned in the county jail for a term of not less than 10 days or more than 6
19 months. A person convicted of a third or subsequent offense shall be fined \$1,000 and be imprisoned in
20 the county jail for a term of not less than 30 days or more than 1 year.

21 (b) A person convicted of the offense of medicaid fraud involving payments, benefits, or claims
22 exceeding \$1,000 in value shall be fined an amount not to exceed the greater of \$50,000 or 10 times the
23 value of the payments obtained or be imprisoned in the state prison for a term not to exceed 10 years,
24 or both.

25 (c) For purposes of imposing sentence for a conviction under subsection (1)(b), the value of
26 payments or benefits involved is the greater of the value of medicaid payments or benefits received as a
27 result of the illegal conduct or activity or the value of the remuneration, rebate, or charge involved.

28 (d) Amounts involved in medicaid fraud committed pursuant to a common scheme or the same
29 transaction may be aggregated in determining the value involved.

30 (e) A person convicted of the offense of medicaid fraud must be suspended from participation in

1 the medicaid program:

2 (i) for any period of time not less than 1 year for a first offense, or the person may be permanently
3 terminated from participation in the medical assistance program;

4 (ii) for any period of time not less than 3 years for a second offense, or the person may be
5 permanently terminated from participation in the medical assistance program; or

6 (iii) permanently for a third offense.

7 (5) In addition to any other penalty provided by law, a person convicted of medicaid fraud is not
8 entitled to bill or collect from the recipient, the medicaid program, or any other third-party payor for the
9 services or items involved and shall repay to the medicaid program any payments or benefits obtained by
10 any person for the services or items involved.

11 (6) The establishment of the criminal offenses specified in this section does not preclude the
12 application of any other provision of law."

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